



United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/RBP/99
30 June 1994

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Thirteenth session
Geneva, 24 October 1994
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

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II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1 Election of officers

In accordance with rules 18 and 19 of the rules of procedure of the main Committees of the Board ¹/, the Bureau of the Intergovernmental Group of Experts on Restrictive Business Practices shall consist of seven members, including four members from lists A and C combined, two from list B and one from list D, referred to in the annex to General Assembly resolution 1995 (XIX) as amended. In keeping with the cycle of rotation for the election of Chairman and Rapporteur, the Chairman at the thirteenth session of the Intergovernmental Group of Experts (the sixth of a seven-session cycle) shall be a representative of one of the States members of list B and the Rapporteur a representative of one of the States members of List A (Asia). Three Vice-Chairmen shall be elected from lists A and C combined, one from list B and one from list D.

Item 2 Adoption of the agenda and organization of work

The provisional agenda for the thirteenth session was approved at the closing plenary meeting of the twelfth session of the Intergovernmental Group of Experts, on 22 October 1993. ²/

Concerning the organization of the work of the session, the Group has five working days available. It is therefore suggested that the first plenary meeting, on 24 October, be devoted to procedural matters (items 1 and 2) and to introductory statements. The closing plenary meeting, on 28 October, would be devoted to any action taken by the Group on the substantive agenda items, item 6 (Provisional agenda for the fourteenth session of the Intergovernmental Group of Experts), item 7 (Other business) and item 8 (Adoption of the report of the Intergovernmental Group of Experts).

The afternoon of Thursday, 27 October would need to be kept free for the preparation of the draft report. The remaining meetings (i.e. from the afternoon of 24 October to the morning of 27 October) would be devoted to the substantive items on the agenda (items 3 to 5).

Item 3 Studies related to the provisions of the Set and consultations on Restrictive Business Practices

At its twelfth session, the Intergovernmental Group of Experts on Restrictive Business Practices requested the UNCTAD secretariat to publish the study on "Concentration of market power through mergers, take-overs, joint ventures and other acquisitions of control, and its effects on international markets, in particular the markets of developing countries" (TD/B/RBP/80/Rev.2) and to revise the UNCTAD study on "The role of competition policy in economic reforms in developing and other countries" (TD/B/RBP/96) taking into account the comments made at the twelfth session of the Intergovernmental Group of Experts and written comments to be submitted by

member States by the end of January 1994. The revised version of the study (TD/B/RBP/96/Rev.1) will be submitted to the Group at its thirteenth session for consideration.

Under this item, the Intergovernmental Group of Experts will also have before it a note by the UNCTAD secretariat (TD/B/RBP/100) containing extracts of the replies from States to the note of the Secretary-General of UNCTAD of 2 May 1994, requesting information on the steps taken by States and regional groupings, at the national or regional levels, to meet their commitment to the Set of Principles and Rules.

With respect to consultations on restrictive business practices, the Second United Nations Conference to Review all Aspects of the Set 3/ in 1990 requested the Secretary-General of UNCTAD to issue and regularly update a directory of restrictive business practices control authorities and to prepare an indicative checklist for requests for information, as well as a checklist of possible steps which countries may wish to follow in the preparation of a case and in their request for consultations.

The Intergovernmental Group of Experts at its twelfth session requested the secretariat to:

- (i) finalize the checklists contained in TD/B/RBP/78/Rev.2, taking into account the comments made during the twelfth session of the Group and comments received from member States before the end of January 1994;
- (ii) prepare and circulate an updated directory of competition authorities well in advance of the thirteenth session of the Group.

The Directory of Restrictive Business Practices Control Authorities, including a final version of the checklists for exchanges of information and consultations, is contained in TD/B/RBP/78/Rev.3.

In addition, under this item of the agenda - as has become customary at each session of the Intergovernmental Group of Experts - States are invited to undertake during the session multilateral or bilateral consultations on issues concerning control of restrictive business practices. Accordingly, the secretariat will provide the facilities necessary for such consultations upon request.

In this connection, member countries of OECD have suggested the following two topics for multilateral consultations:

- (a) How to define relevant markets in competition law enforcement: the main factors in practice to be taken into consideration;
- (b) Control of horizontal agreements under competition laws.

The United Kingdom has volunteered to make a presentation on the first topic and France on the second. Other delegations from OECD member countries have indicated that they were prepared to contribute to the two topics after

the introduction by the lead speakers. Other States are invited to make presentations on these or other subjects they may wish to discuss during the session. It is recalled that, as decided by the Second Review Conference, topics should be selected in advance of each session and time made available for the discussion (cf. resolution adopted by the Review Conference, para. 9).

Item 4 The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices and Competition Legislation

At its twelfth session (agreed conclusions, section C), the Intergovernmental Group of Experts requested the UNCTAD secretariat to:

- (i) Continue the elaboration of the commentary to the model law or laws in TD/B/RBP/81/Rev.2, taking into account the comments made during the twelfth session and comments received from member States before 31 January 1994. To this end, member States were invited to make, as far as possible, concrete drafting proposals for additions relating to the treatment of specific issues under their own national competition legislation;
- (ii) continue the compilation and updating of the Handbook on RBPs legislation and those member States that have not done so to date, or which have adopted new or amending legislation, were invited to submit the text of their competition laws to the secretariat in one (or more) official languages of UNCTAD, as well as appropriate commentary to such legislations, according to the format contained in the introduction to TD/B/RBP/94.

Accordingly, the secretariat has prepared a revised commentary to the model law, which is contained in TD/B/RBP/81/Rev.3, and a further compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/RBP/101).

Item 5 Work programme on restrictive business practices including technical assistance, advisory and training programmes on restrictive business practices, and preparation of the Third Review Conference

Under this item, the Intergovernmental Group of Experts is expected to give guidance to the UNCTAD secretariat as to the further work it is requested to undertake.

It is recalled that the United Nations Conference on Trade and Development, at its eighth session, agreed that "UNCTAD should pursue, through the Intergovernmental Group of Experts on Restrictive Business Practices, its work with regard to policies and rules for the control of restrictive business practices in order to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade". It also decided that "The UNCTAD secretariat and developed countries should also provide, upon request and within available resources, developing countries and other countries with technical co-operation in the area of competition policy". 4/ In this connection, the Group of Experts, at its twelfth session (agreed conclusions, section D):

- (i) Called upon intergovernmental organizations and financing programmes - as well as member States through voluntary financial and other contributions - to provide the appropriate resources for the activities mentioned below (i.e. in para. (ii)); and to inform the secretariat of UNCTAD on programmes under which application of technical assistance could be made; and called upon intergovernmental organizations to coordinate and cooperate in the area of competition policy with a view to avoiding unnecessary duplication of work and to maximize results with existing limited resources;
- (ii) Requested the UNCTAD secretariat to continue to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy to developing countries and to countries in transition, and to report on its activities so as to enable the Intergovernmental Group of Experts at its thirteenth session to evaluate these activities.

Accordingly, a report on UNCTAD's technical assistance, advisory and training services (TD/B/RBP/102) will be submitted to the Intergovernmental Group of Experts.

Moreover, at the forty-eighth session of the General Assembly, the Second Committee decided to convene 5/ under the auspices of the United Nations Conference on Trade and Development, a Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices at Geneva, in 1995.

Accordingly, the Intergovernmental Group of Experts on Restrictive Business Practices may wish to decide that its fourteenth session, scheduled for 6-10 March 1995, will serve as the preparatory body for that Conference.

Item 6 Provisional agenda for the fourteenth session of the Intergovernmental Group of Experts

During the session, the UNCTAD secretariat will submit a draft provisional agenda for the fourteenth session of the Intergovernmental Group of Experts, the dates of which are tentatively set for 6-10 March 1995.

Item 7 Other business

Item 8. Adoption of the report of the Intergovernmental Group of Experts

Trade and Development Board resolution 228 (XXII) provides that the Group shall submit reports on its work at least once a year to the Board.

Notes

1/ The rules of procedure of the main Committees are contained in TD/B/740.

2/ Para. 57 and annex II of the report of the Intergovernmental Group of Experts on Restrictive Business Practices on its twelfth session (TD/B/40(2)/2) - TD/B/RBP/98).

3/ Report of the Conference (TD/B/RBP/CONF/3/9).

4/ The Cartagena Commitment, paras. 147 and 148.

5/ Decision 48/442 of 21 December 1993 of the General Assembly.
